

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

5 Chapter 11

6 MOTORS LIQUIDATION COMPANY,

Case No.: 09-50026(REG)

7 et al, f/k/a General Motors

(Jointly Administered)

8 Corp., et al.,

9  
10 Debtors.

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12  
13 U.S. Bankruptcy Court

14 One Boling Green

15 New York, New York

16  
17 August 18, 2014

18 9:46 AM

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21 B E F O R E :

22 HON ROBERT E. GERBER

23 U.S. BANKRUPTCY JUDGE  
24  
25

1 Hearing re: Threshold Issues Letters, filed pursuant to the  
2 Supplemental Scheduling Order, Dated July 11, 2014.

3  
4 Hearing re: Motion of General Motors LLC Pursuant to 11  
5 U.S.C. § 105 And 363 To Enforce the Sale Order And  
6 Injunction ("Motion to Enforce"), filed by General Motors  
7 LLC (ECF 12620, 12621).

8  
9 Hearing re: Motion of General Motors LLC Pursuant to 11  
10 U.S.C. §§ 105 and 363 to Enforce This Court's July 5, 2009  
11 Sale Order And Injunction Against Plaintiffs In Pre-Closing  
12 Accident Lawsuits ("Pre-Closing Accident Lawsuits Motion to  
13 Enforce"), filed by General Motors LLC (ECF 12807).

14  
15 Hearing re: Motion of General Motors LLC Pursuant to 11  
16 U.S.C. §§ 105 and 363 To Enforce This Court's July 5, 2009  
17 Sale Order And Injunction (Monetary Relief Actions, Other  
18 than Ignition Switch Actions)("Monetary Relief Actions  
19 Motion to Enforce"), filed by General Motors LLC (ECF  
20 12808).

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25 Transcribed by: Dawn South

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Have seats, please.

3 Okay, we're here on GM, and I think I know all of  
4 the folks who are going to be the principal speakers today,  
5 and others can introduce themselves when it's their turn to  
6 be heard.

7 I do have some preliminary comments and thoughts  
8 that I want to share with you.

9 Folks, I'm appreciative of the effort that y'all  
10 made between the time that I last saw you and now,  
11 particularly, vis-à-vis, the stipulations.

12 I've received letters from Mr. Steinberg,  
13 Mr. Flaxer, Mr. Golden, yeah, who I see there, Mr. Esserman,  
14 and I've reviewed the notebook with the stipulations and the  
15 disputed facts, although I'll confess to you that I did it  
16 mainly to get my arms around the terrain rather than  
17 mastering the underlying facts that are stated there.

18 I don't claim the same familiarity with the stipulations  
19 and the disputed facts that I do with the letters.

20 After review of the submissions I'm inclined to  
21 agree with Mr. Esserman and Mr. Steinberg for reasons most  
22 fully fleshed out by Mr. Esserman, that discovery in this  
23 court before getting to work on the briefing would be a bad  
24 idea. Mr. Flaxer, certainly I want to get your perspective  
25 on that.



1 I'm not of a view to stand in the way of any  
2 discovery of the type that Judge Furman identified at his  
3 recent conference in the District Court, but here we're  
4 talking about incremental additional discovery of a  
5 fundamentally different character going beyond redelivering,  
6 if you will, material that's already been delivered once.  
7 And I have material concerns that as Mr. Esserman pointed  
8 out in his letter that the costs of any such discovery  
9 articulated initially as being eight weeks would be at least  
10 that bad and potentially much worse.

11 It also appears to me that you folks have plenty  
12 of work to do any way, and another thought that wasn't  
13 addressed in the papers but which has informed the exercise  
14 of my discretion on this has been that one of the things  
15 that you folks are going to be briefing, as I understand it,  
16 is the legal standard for fraud on the Court, and one of the  
17 reasons why I wanted you guys to address that in your  
18 briefing, I think I had said this out loud in the last  
19 conference, it may have been just in my head, was that the  
20 legal standard could inform the exercise of my discretion  
21 and your thoughts shared with me on what kind of discovery  
22 then becomes necessary.

23 So all of those facts tend to cause me as a  
24 tentative -- only as a tentative -- but as a tentative that  
25 we're not going to hold up the train from leaving the

1 station by reason of the desires for discovery that your  
2 guys articulated, Mr. Flaxer, but obviously I'm going to  
3 give you a chance to be heard on that.

4 The second main area of controversy, and it's  
5 going to expand into a third area where I'm going to need  
6 your help, is the extent to which we should wait for the  
7 filing of a consolidated and amended complaint.

8 Related to that is a desire that many, if not all  
9 of you, share but which I still have some questions in my  
10 own mind about on deferring two of the four issues,  
11 vis-à-vis, the extent to which any of these claims to the  
12 extent they otherwise exist would be against Old GM and on  
13 equitable mootness.

14 When I was addressing these issues at our last  
15 conference it had seemed to me at the time that some of the  
16 issues were mirror images of the others and that the  
17 entirety of the issues were presented kind of a holistic  
18 type of situation where I couldn't really get my arms around  
19 things without getting my arms around the entirety. That's  
20 still my instinct in terms of the way by which I would  
21 ultimately rule.

22 It's not the same thing as to say that we're going  
23 to take the briefing in nibbles as it is to say that we're  
24 going to do everything in seriatim after earlier rulings,  
25 but I don't think I'm giving away the nuclear launch codes

1 when I tell you that I'm unlikely to decide the issues we  
2 have here off the bench, I'm unlikely to be issuing only a  
3 dictated decision, and I'm unlikely -- change on likely to  
4 it ain't gonna happen that you're going to get a decision on  
5 the issues we have here as quickly as you got a decision on  
6 the 363 issues back in July of 2009.

7 But with that said I share the view by  
8 Mr. Esserman, and not disagreed by Mr. Steinberg, maybe not  
9 even Mr. Flaxer, that we should be moving as expeditiously  
10 as we can do so responsibly.

11 And then on the other hand I see a largely  
12 unanimous view, which I share, that the task of giving you  
13 guys meaningful rulings would be easier with the benefit of  
14 the consolidated complaint. That gives me the luxury of  
15 giving you all and Judge Furman rulings on what particular  
16 causes of action are green light, what are red light, and  
17 what are yellow light in terms of helping him do his job and  
18 allowing you folks to put your energy into particularly  
19 kinds of claims or if you wish to get appellate review.

20 But waiting for the consolidated complaint imposes  
21 a price in time, and since subject to one of you guys  
22 correcting me post 363 sale personal injury and death cases  
23 are going to be going forward before Judge Furman in any  
24 event, it raises the question for which I need your help as  
25 to how I can best keep things moving forward here without a

1 material adverse impact on what Judge Furman is trying to  
2 accomplish.

3 I also have a selfish need that I want to start  
4 thinking about these issues even if I don't put pen to paper  
5 and go public with them as early as practical, so I need you  
6 folks to help me find the sweet spot to enable me to get the  
7 benefit -- me and maybe you all as well -- of that amended  
8 complaint while permitting progress to continue here.

9 And that brings us finally to the next point,  
10 which isn't on the agenda for many of you but which is for  
11 Mr. Steinberg and which is for me, which is that I gather  
12 there are new issues that need to be teed up for judicial  
13 determination. One with respect to preclosing personal  
14 injury and death cases, and a second variant of issues that  
15 Mr. Steinberg wants my attention to now. And it appears to  
16 me that those need to be addressed.

17 In a perfect world I wouldn't be writing two or  
18 three or four opinions for you all and I want your thoughts  
19 as to how I can tee up those issues for determination  
20 without dragging everybody else into delay and without  
21 impairing the needs of everybody else to get these issues  
22 determined.

23 So that's the present state of my thinking now and  
24 where I need your help the most.

25 I'll hear from each of you with appropriate

1 opportunities for reply and surreply until we're done.

2 At this point I want to deal only with the issues  
3 that I've talked about and not the miscellaneous issues that  
4 we're going to have to deal with, vis-à-vis, other more  
5 limited plaintiff groups which I'll deal with at the end of  
6 the conference.

7 I don't know how you folks have addressed if you  
8 have who's going to be heard first and so forth. Is there  
9 any agreement or shall I just let the first guy up there  
10 speak?

11 MR. STEINBERG: Good morning, Your Honor, Arthur  
12 Steinberg from -- and Scott Davidson from King & Spalding,  
13 and Rick Godfrey from Kirkland & Ellis.

14 With regard to your -- the discussion about the  
15 MDL complaint and whether you should wait until the MDL  
16 complaint to hear the briefing on the third threshold issue,  
17 which is the Old GM claim issue, we believe --

18 THE COURT: Pause, please, Mr. Steinberg, I didn't  
19 plan to interrupt you so soon.

20 In your view does it affect only that one of the  
21 four or does it go beyond that?

22 MR. STEINBERG: I think it also affects the  
23 equitable mootness argument, but to some extent a little  
24 less so than the Old GM threshold issue.

25 Your Honor, there are at this point in time 102

1 complaints related to the ignition switch motion that we  
2 filed with the court, that we're up to that amount in number  
3 now. So if the District Court had not said anything we  
4 would have had some difficulty, although it was obviously  
5 doable, to try to lump everything that every creative lawyer  
6 would have put into these complaints to try to respond on  
7 the Old GM issue -- Old GM claim issues so Your Honor would  
8 have had the benefit of it.

9 Your Honor had heard over the last few weeks and  
10 have seen papers filed by Mr. Peller (ph), who said that he  
11 in effect went to school on the earlier complaints and  
12 purposely drafted his complaint for his clients differently  
13 so as not to implicate Your Honor's jurisdiction under the  
14 sale order and injunction.

15 Having a master complaint which reflects one set  
16 of issues makes it much easier for us to respond to it and  
17 makes it much easier for us to give it to you so that you'd  
18 be able -- Your Honor will be able to tee it up for  
19 determination.

20 I do think that the exercise of -- that has been  
21 crafted in the MDL court, which is that they have a full 45  
22 days from Friday to sort of try to consolidate all these  
23 into a complaint and then they have 7 days or 10 days -- I  
24 forgot the exact amount -- to then talk to the other counsel  
25 to make sure that it's being appropriately consolidated, and

1 then the overall date would be 60 days from August 15th,  
2 which would take you to October 15th. I think all of that  
3 will make it much easier for all the parties to brief before  
4 Your Honor and all of it easier for Your Honor to make the  
5 determinations that are necessary.

6 For example -- and I think one of the colleagues  
7 on this side of the table actually has said it before, that  
8 some of the earlier complaints say things about implied  
9 warranty, successor liability, and I'm not sure what is  
10 actually going to be alleged when this master complaint has.  
11 I mean clearly I think they will try to avoid the buzz words  
12 which are in the sale order and injunction.

13 So how we brief what is actually said and whether  
14 we say something to the effect of what they're really saying  
15 now is really a successor liability claim it is much, much  
16 easier to try to do that if I'm working off the current  
17 state of play, the current draft of what they're dealing  
18 with.

19 And that's why I think it made the most sense, and  
20 I did speak to Groman before -- the Groman plaintiffs'  
21 lawyer before and they can obviously correct me if I'm wrong  
22 -- but they also agree that those issues should be deferred.

23 So what you have in front of you is all the  
24 litigants who would be briefing the issue which would be the  
25 designated counsel, the Groman plaintiffs, and even the GUC

1 Trust unit holders all agreeing that the issues should be  
2 deferred, recognizing that the GUC Trust unit holders have a  
3 different view as to the timing of the briefing of all  
4 issues. But everybody agrees that it makes sense to defer  
5 it.

6 The reason --

7 THE COURT: Now break that down a little more if  
8 you would, please, Mr. Steinberg.

9 You spoke of unanimity, is that across the board  
10 of all four or potentially five threshold issues or is that  
11 with respect to a subset like on whether they're claims  
12 against Old GM and unmootness?

13 MR. STEINBERG: The unanimity -- and I want to  
14 make sure I get this right -- the unanimity is only with the  
15 Old GM threshold claim, the deferral of that and the  
16 equitable mootness claim. All of the parties have agreed  
17 those should be deferred.

18 The GUC Trust believes that if we're going defer  
19 that then we should defer the briefing on all of the other  
20 issues, and New GM and the designated counsel believe the  
21 briefing should go forward on those issues now. And the  
22 first brief on that is due by New GM and that's due this  
23 Friday, August 22nd.

24 THE COURT: Which category did we put the legal  
25 standard for fraud on the Court?



1 MR. STEINBERG: I think everybody agrees that the  
2 legal standard should be briefed at this point in time. No  
3 one thinks there's a reason to delay.

4 THE COURT: And does that effectively create a  
5 fifth threshold category?

6 MR. STEINBERG: I think the way it was written,  
7 Your Honor, in the scheduling order is there was four  
8 threshold issues and then the fraud on the Court legal  
9 standard was put in a separate decretal paragraph. The  
10 reality is is that there are five threshold issues.

11 So we believe that it makes sense to delay the  
12 briefing. And when you look at the schedule based on the  
13 order that Your Honor signed on October 1st -- I'm sorry --  
14 August 1st the last briefing --

15 THE COURT: Is that the endorsed order --

16 MR. STEINBERG: That's the endorsed --

17 THE COURT: -- where I approved your proposed  
18 briefing schedule?

19 MR. STEINBERG: Yes, that's the one where you  
20 approved --

21 THE COURT: And the page limits?

22 MR. STEINBERG: -- the page limits, but the last  
23 paragraph asks for a slight further adjournment so that the  
24 designated counsel would have a greater opportunity to  
25 circulate their brief to other counsel to review and

1 therefore they asked for an additional period of time which  
2 we consented to.

3 So I think the present schedule has their brief  
4 due on September 22nd and our reply due on October 10th.  
5 And the present schedule says oral argument would not be  
6 scheduled before October 20th, would be done in consultation  
7 with the parties, but would be based on whenever Your Honor  
8 believes it's appropriate to do that. And when you look at  
9 that kind of calendar of dates the MDL complaint is supposed  
10 to be filed on October 15th, so --

11 THE COURT: Did you say 15th?

12 MR. STEINBERG: October 15th.

13 So my own thoughts with regard to how to try to  
14 sort of coalesce what the GUC Trust unit holders would like  
15 to see in the briefing and what the designated counsel and  
16 New GM believe should happen in the briefing is that we  
17 should be briefing the issues that we know we can brief,  
18 which is the remedy section, the due process section, and  
19 the fraud on the Court legal standard, and we should adhere  
20 to that schedule.

21 At some point in time the MDL complaint will be  
22 filed on October 15th, Your Honor could have a short status  
23 conference shortly after the October 15th to give us an  
24 opportunity to read the brief and see if we can agree on a  
25 briefing schedule. At that point in time Your Honor will

1 have the benefit of the briefing that we've already  
2 submitted, Your Honor will always be able to decide when you  
3 want to schedule oral argument, and you could decide whether  
4 you want to schedule oral argument on the three issues that  
5 have already been briefed or whether you want to wait for  
6 all -- all the other issues to come in and have the oral  
7 argument all heard at one point in time.

8           The benefit of that kicking the can approach down  
9 the road as to how to finesse Mr. Golden's issue is that  
10 Your Honor will have the benefit of the briefing and  
11 everybody's briefing for the benefit of Your Honor to make  
12 his determination. So if you have the benefit of the briefs  
13 and you believe that you do need to see what the other  
14 briefs look like on -- I assume it's the equitable mootness  
15 thing that is driving Mr. Golden -- then you'll have the  
16 ability to say that's fine, we'll work through the briefing  
17 schedule on oral argument and we'll reschedule when  
18 everything is in.

19           If Your Honor thinks that equitable mootness  
20 shouldn't drive the due process argument, which is what I  
21 believe is the case, but you know, this is a little like the  
22 song from the Fantastics where if I say one thing everybody  
23 else will automatically reflexively say I should be on the  
24 other side of the equation. If everybody believes as I said  
25 that it'll all be more easier for Your Honor to see and for

1 everybody to see whether you need to have further briefing  
2 to decide on other issues to properly decide the due process  
3 issue Your Honor will make that decision with the benefit of  
4 the briefing.

5 So that would be my way of trying to coalesce the  
6 briefing.

7 On the discovery issue I think the words that come  
8 out of the designated counsel as to -- and Mr. Esserman's  
9 letter reflecting why there should be no further discovery  
10 and why the discovery suggested by the Groman plaintiffs  
11 will delay this matter significantly beyond six to eight  
12 weeks.

13 I mean the document discovery which ultimately may  
14 be produced in the MDL court will be, you know, millions of  
15 pages. They want as part of their proposal to propound  
16 additional document discovery, they want to take deposition  
17 discovery which the MDL court has not authorized to be  
18 taken, all for the purposes of saying I can get potentially  
19 a better case even though I think there's enough stipulated  
20 facts for me to win my case right now.

21 Well, I may disagree that they'll ever be able to  
22 win their case, but I do believe that we went through a  
23 laborious exercise and we came across with enough stipulated  
24 facts that I think Your Honor has the ability to rule on the  
25 due process issue and the remedies issue and you don't need

1 the facts for the legal standard issue.

2 The due process -- and I would want to point out  
3 that vis-à-vis New GM's disputed facts, the designated  
4 counsel's disputed facts, and the GUC Trust disputed facts,  
5 none of them are really what I'll say fully disputed.

6 The New GM disputed facts are I think six or  
7 seven. Three of them are things that we believe that we  
8 could put in by affidavit, the other side just didn't want  
9 to stipulate it because there was nothing in the public  
10 record. But we think Your Honor's order said that you could  
11 handle this like a summary judgment motion. We think those  
12 issues could be put in by affidavit.

13 The others relate to the third threshold issue and  
14 were disputed really by the GUC Trust unit holders and  
15 that's why they're there.

16 So vis-à-vis the new --

17 THE COURT: The third one being whether if they're  
18 not claims against --

19 MR. STEINBERG: That's correct.

20 THE COURT: -- New GM they're claims against Old  
21 GM?

22 MR. STEINBERG: That's correct.

23 The designated counsel disputed facts, and I think  
24 they -- theirs are eight. So there's only eight disputed  
25 facts on the designated counsel. Seven of the eight are

1 responded to by us.

2 What happened, just so Your Honor understands the  
3 exercise, they very citing from an excerpt in the Valucas  
4 (ph) report. We believe that the Valucas report had some  
5 additional language which helped put the event that was  
6 being described into better content. It is the equivalent  
7 of someone cross-examining on a deposition --

8 THE COURT: A Rule 32 --

9 MR. STEINBERG: Right.

10 THE COURT: -- counter-designation.

11 MR. STEINBERG: That's correct.

12 So what you have there is the exact same event  
13 being described in our disputed issues where we said it's  
14 like a point counter-point, they have it strictly as their  
15 designated counsel issue.

16 So, for example, I think they wanted to introduce  
17 an excerpt from the Valucas report that said that Ray  
18 Degorgio (ph) -- the idea that Ray Degorgio didn't change  
19 the switch part number was sent to other people at GM and we  
20 wanted to include in the Valucas report that said that the  
21 other people that he sent it to were cc'd on an email and  
22 they were not involved with the ignition switch issue at all  
23 and were not involved in investigating the problem.

24 So we thought that was relevant to describing the  
25 issue, they obviously didn't want to put that in, and that's

1 why you see it separated in two.

2 So that takes care of seven of the eight disputed  
3 facts by the designated counsel.

4 The other one was a statement where their  
5 authority was a consumer advocate group on a letter that  
6 they wrote to Congress. My guess is if they have an  
7 independent source to validate it they'll put it in by  
8 affidavit and we'll be able to respond as to whether it's  
9 true or not.

10 But I think vis-à-vis the designated counsel there  
11 truly are no disputed facts that each of us has come up with  
12 to prevent the issues from being decided.

13 With regard to the GUC Trust all of -- I think  
14 they had seven disputed facts, all of them related to the  
15 issues that are being deferred. It's the Old GM retention  
16 issue or the equitable mootness issue.

17 And to be candid I think the major objection is  
18 really not much of an objection, it's that they -- we  
19 believe that either it was a legal conclusion or it was an  
20 argumentative presentation of a fact that we didn't want to  
21 sign off onto. But I think ultimately at the end of the day  
22 even when we get to those issues that will not delay any  
23 need -- there won't be any need for discovery on that.

24 So I think the by-product of going through the  
25 discovery with the designated counsel and the GUC Trust unit

1 holders is that we really do have a stipulated record that  
2 Your Honor can rule certainly on the issues that we've  
3 isolated for Your Honor to rule on right now.

4 The Groman plaintiffs put in 83 disputed facts. I  
5 will say that 12 of the 83 have the same point counter-point  
6 issues relating to the Valucas report. So they cite to  
7 something in the Valucas report and we say it's -- for the  
8 rule of completeness this should be a broader cite. So they  
9 really have 69 disputed facts, but you know, it's  
10 significant that whatever they're alleging are things that  
11 the designated counsel didn't think needed to be set  
12 forward, and some of them we described in our letter to the  
13 Court were aspirational, right?

14 And so I'd give an example of what I would  
15 consider to be a aspirational facts. They said, "Before  
16 ..." -- this is number 44 -- "Before entry of a sale order  
17 Old GM disclosed the defective ignition switch or related  
18 potential claims to the U.S. government."

19 Forty-five, "Before entry of the sale order Old GM  
20 did not disclose the defective ignition switch or related  
21 potential claims to the U.S. government."

22 These aren't disputed facts, they had no basis for  
23 that fact one way or the other, they were using this as an  
24 opportunity to do rules for admission is, that's what you  
25 would (indiscernible - 00:28:39) admission.



1 To be candid on our first iteration of the  
2 disputed facts we did some of the same thing, and when the  
3 designated counsel said that's not really what this exercise  
4 is about we eliminated it from our side, they eliminated it  
5 from their side, and these are some of the remnants that are  
6 left in the Groman plaintiffs' stipulations.

7 There was a recitation that said something like  
8 Robert Osborn provided information regarding the ignition  
9 switch failure -- Robert Osborn was a general counsel at one  
10 point of Old GM --to -- relating to the chart that was on  
11 the Delphi settlement of Fritz Henderson. When we said what  
12 was the basis for that, they said no, but that would make  
13 our case better and stronger. And the Valucas report  
14 actually described the attachment to the Delphi and talked  
15 about what they did and said they had no solutions.

16 Their response was, well, I'd like to be able to  
17 in effect take what I will describe as a fishing expedition  
18 to see whether they can catch anything. But that is in the  
19 nature of what we think has happened here.

20 Some of these disputed facts -- most of these  
21 disputed facts were put in as the basis knowing that we  
22 couldn't accept it, knowing that we would deny it, that they  
23 would then want to ask for discovery, which would have made  
24 a large portion of our exercise a waste of time.

25 And while we may have been able to skinny some of

1 these things down from the 69 to a smaller amount there was  
2 -- and I will say it charitably -- there was a  
3 miscommunication as to whether they were still asserting  
4 these claims at all.

5 As Your Honor could imagine when we were going  
6 through the process I said to everybody I'd like everybody  
7 to give me their designations that they want me to review  
8 that they're asking me to make compromises on at one time,  
9 and I had made it clear that I was no longer interested in  
10 getting the designated counsels' stipulations and then  
11 separately two days later the Groman stipulations over the  
12 same factual matters. I said, you need to talk to each  
13 other and you need to give it to me at one time so that I  
14 can evaluate what it is that I want to do. There was a lot  
15 of what's good for the goose is good for the gander type of  
16 discussion that we were having in this matter.

17 So after two meet and confer sessions I thought  
18 that this list had been put to bed, that whatever I was  
19 dealing with with the designated counsel was the final  
20 version of what I had to deal with, and at 8 o'clock on  
21 Thursday night --

22 THE COURT: Let me interrupt you for a second.

23 Am I correct that I don't have to find whether one  
24 side was right or one side was wrong in terms of this issue  
25 and that I need to focus only on that discovery that remains

1 to be accomplished before this stuff can be briefed?

2 MR. STEINBERG: That's absolutely you're right --  
3 absolutely right, Your Honor, and I'll move on from that  
4 point.

5 THE COURT: Then I want to cut you off.

6 MR. STEINBERG: It was --

7 THE COURT: And --

8 MR. STEINBERG: No, no, it's appropriate.

9 THE COURT: -- because that's going to require  
10 Mr. Flaxer to respond, he already responded once in this  
11 letter, I don't think that's --

12 MR. STEINBERG: I'm prepared to --

13 THE COURT: -- a good use of our time.

14 MR. STEINBERG: I'm prepared to accept that it was  
15 a miscommunication, but I wanted to explain to Your Honor  
16 why we ended up with so many that are still out there and I  
17 was trying to give Your Honor what the explanation would be.

18 But our bottom line is that what they're proposing  
19 is entirely unworkable and that the designated counsel who  
20 are now essentially mostly the representatives of the lead  
21 counsel that have been appointed by the MDL. The Groman  
22 plaintiffs' lawyers were not on any of the selected counsel  
23 positions for the MDL. So they are -- they are entitled to  
24 defend their clients, I don't dispute that, but they are  
25 sort of an outlying from the general gist of what is being

1 pushed forward in the MDL, which is that there's a lead  
2 counsel, there's an executive counsel, there's liaison  
3 counsel, and the Groman plaintiffs are not on any of those  
4 lists as to how the MDL is going to go forward.

5 And therefore I believe that the viewpoints of the  
6 designated counsel on this issue and probably all other  
7 issues is the stronger voice that Your Honor should hear as  
8 to what the collective ignition switch plaintiffs want to  
9 see go forward.

10 I think Your Honor that addresses the issues.

11 THE COURT: All right, thank you.

12 Mr. Flaxer I want to give you a chance to be heard  
13 after the other guys have weighed in. So I'll hear next  
14 from Mr. Esserman and then from Mr. Golden or Ms. Rubin, and  
15 then you can respond to everybody who you think you need to  
16 respond to, Mr. Flaxer.

17 MR. ESSERMAN: Good morning, Your Honor, Sandy  
18 Esserman on behalf of designated counsel with Mr. Weisfelner  
19 and Mr. Inselbuch present in the courtroom also.

20 I'm not going to speak long, our letter I think  
21 set forth our views on discovery and I've got nothing  
22 further to add to that.

23 We think that there's more than enough  
24 stipulations to decide the issues that are going to be  
25 decided, that being issues number 1 and number 2.

1 GM late Friday asked that the issue, what I'll  
2 call 3 and 4 or C and D under your order, be deferred. We  
3 have no objection to that.

4 I would note that those two issues specifically  
5 use the word "ignition switch actions," and they're  
6 requesting a response -- or initial brief by GM based on the  
7 ignition switch actions, both the Old GM threshold issue and  
8 the equitable mootness issue.

9 So I certainly understand the predicament that it  
10 puts General Motors in, that is you've got 102 complaints or  
11 you've got a master complaint, which they just want to  
12 respond to that one, and that is understandable and we  
13 accept that.

14 We do not see a need to postpone all four issues,  
15 we think it is beneficial to this Court, it's beneficial to  
16 the MDL court to get decisions out of this Court.

17 We all read very carefully the decisions of the --  
18 the orders of the MDL and I think it is looking to this  
19 Court to make certain decisions as it feels that it can, and  
20 we certainly believe that the threshold -- due process  
21 threshold issue and the remedies threshold issue you will  
22 have a record, you will be able to make those decisions on  
23 the record that exists now without any further discovery and  
24 without any further stipulations frankly.

25 So we think we're ready to proceed. I know new

1 General Motors' brief is due in a few days, we'll respond.

2 With regard to the discovery I think I'm just  
3 going rest on my papers.

4 THE COURT: Okay.

5 MR. ESSERMAN: Thank you.

6 THE COURT: Thank you.

7 Mr. Golden?

8 MR. GOLDEN: Good morning, Your Honor, Daniel  
9 Golden, Akin Gump Strauss Hauer & Feld, counsel for certain  
10 unit holders.

11 Your Honor, as you've now heard and read both New  
12 GM and designated plaintiffs' counsel are seeking to put off  
13 consideration of two of the four threshold issues, namely  
14 the Old GM claim threshold issue and the equitable mootness  
15 threshold issue on the grounds that the MDL court is  
16 requiring the filing of a consolidated complaint for the --  
17 in place of the more than 100 pending class action  
18 complaints asserting claims involving economic loss.

19 As a result of that position New GM and the  
20 designated plaintiffs' counsel are seeking to go forward now  
21 only with respect to the due process threshold issue and the  
22 related remedies threshold issue.

23 THE COURT: And the standards for fraud on the  
24 Court.

25 MR. GOLDEN: And the standards. Nobody is

1 objecting to going forward on the legal standards of fraud  
2 on the Court.

3 Your Honor, we filed a letter late Friday  
4 afternoon, by the way it did contain a typo. I think the  
5 intent of the letter was clear, but we interchanged two of  
6 the threshold issues. But in that letter we explained that  
7 we disagreed with the notion that you could go forward  
8 simply with the procedural due process violation and the  
9 related remedies issue when you are deferring the other two  
10 issues and you don't have the benefit of the consolidated  
11 complaint when we are going to discuss the due process  
12 issues and the related remedies issues.

13 We believe that it would be virtually impossible  
14 for Your Honor to decide completely the due process  
15 violation issues and the related remedies issues without the  
16 benefit of the consolidated complaint, and more importantly  
17 without the benefit of the equitable mootness arguments.

18 Your Honor, we took comfort from your opening  
19 comments that your view of this was that this was largely  
20 holistic and that many, if not all, of these threshold  
21 issues are interrelated or mirror images of one another, and  
22 we agree.

23 The remedies threshold issue, which is the second  
24 part of the due process violation threshold issue, is  
25 defined in this Court's supplemental order as requiring this

1 Court to determine once it -- or if -- once and if it  
2 determines that there has in fact been a due process  
3 violation whether a remedy can or should be fashioned as a  
4 result of such violation, and if so, against whom.

5 It is our view that in deciding this issue the  
6 Court would be required to consider whether the plaintiffs  
7 are actually able to assert claims against the GUC Trust or  
8 whether these claims are equitably moot, they go in tandem  
9 with one another.

10 I don't understand the process where people would  
11 be denied the ability to brief the equitable mootness  
12 argument and not responding to the due process violation.

13 It would be a defense to the assertion by the  
14 plaintiffs if it came to that point that they wanted to  
15 assert their claims against the GUC Trust in the context of  
16 procedural due process violation whether or not those claims  
17 are equitably moot. That is a point you know that we are --  
18 consistently have supported, have suggested to the Court  
19 that without that finding I don't know how you can make a  
20 complete ruling on the procedural due process and the  
21 remedies issue.

22 In addition one of the issues that will almost  
23 definitely come up in the context of the due process  
24 threshold issue is the number of cars and thus the number of  
25 claimants which are the subject of ignition switch actions.



1           There seems to be a fair amount of confusion if  
2           you read through the stipulated facts. It seems that New GM  
3           is asserting that only 2.2 million cars based upon recalls  
4           issued on February 7 and February 25 and March 28th are the  
5           subject of ignition switch actions as a defined term. We  
6           believe that's -- that estimate is off by more than  
7           11 million cars based upon additional recalls issued on  
8           June 16 and June 30.

9           The consolidated complaint will shed substantial  
10          light on who's right and who's wrong on what appears to be a  
11          factual dispute.

12          Moreover the consolidated complaint will also shed  
13          light on the actual claims being asserted and who they are  
14          being asserted against. Whether New GM or Old GM, and that  
15          will go to the Old -- to the Old GM claim threshold issue.

16          Your Honor has already indicated that the ruling  
17          on these threshold issues will take a considerable amount of  
18          time. It won't be a ruling from the bench, it won't be a  
19          ruling that Your Honor will just simply dictate having had  
20          the benefit of briefing and oral argument.

21          The complaint is to be filed I think Mr. Steinberg  
22          said by October 10th -- October 15th, excuse me. Yes, our  
23          position would engender a delay in the briefing of the due  
24          process violation and the related remedies issue, but we  
25          think that they are so interrelated and equitable mootness

1 is essentially a defense in some respects to the due process  
2 violation and the related remedies issue that it would be  
3 worth the delay of approximately 60 days, have the  
4 consolidated complaint in front of us, there won't be a  
5 dispute any longer about what's being asserted in that  
6 complaint, and at that time and immediately thereafter all  
7 of the parties can brief all of the issues, which as Your  
8 Honor has indicated would probably be helpful in the sense  
9 that they are mirror images of one another.

10 THE COURT: Pause, please, Mr. Golden.

11 MR. GOLDEN: Yes, Your Honor.

12 THE COURT: I didn't want to interrupt you as you  
13 were going through it because I was hoping you would  
14 anticipate what I'm about to ask next.

15 So far I'm not aware of there being much  
16 disagreement on the benefits of the amended complaint.

17 Is the difference in perspective that you have  
18 from the other guys -- or at least some of the other guys --  
19 vis-à-vis, whether everything should await briefing wise the  
20 filing of the amended complaint or do you understand there  
21 to be consensus that I can split the briefing to deal with  
22 some stuff to get a running start and other stuff after the  
23 amended complaint is filed or can I solve the problem by  
24 simply not having oral argument in ruling until everything  
25 is in?

1 MR. GOLDEN: Well you can't glean an answer to  
2 that question from the letters that were submitted.

3 Mr. Steinberg in his oral presentation suggested a  
4 possibility that maybe you can have the baby by having  
5 briefing but delay oral argument until some time  
6 substantially or sufficiently after the filing of the  
7 consolidated complaint so as to give the GUC Trust and the  
8 GUC Trust unit holders the opportunity having seen the  
9 consolidated complaint to be able to weigh in at least with  
10 respect to oral argument on the equitable mootness  
11 implications that follow from the consolidated claim.

12 Your Honor, frankly we think that's unfair. We  
13 don't see in the large scheme of this litigation that  
14 delaying procedural due process by 60 days is going to make  
15 much of a difference at all. Frankly, I think it's largely  
16 tactical on the part of the designated plaintiffs and New GM  
17 to try and separate equitable mootness from procedural due  
18 process. We don't think that's fair.

19 So at the end of the day because --

20 THE COURT: Pause, please.

21 MR. GOLDEN: Yes.

22 THE COURT: Because I'm sure everybody comes with  
23 their own tactical moves and concerns.

24 MR. GOLDEN: Absolutely, Your Honor.

25 THE COURT: But your position in substance is that

1 if indeed it is holistic you would think it more appropriate  
2 that after waiting the time for the amended complaint to be  
3 out there to be available for all I should then deal with  
4 all five issues at the same time with the knowledge of what  
5 the amended complaint says?

6 MR. GOLDEN: Absolutely, Your Honor, we think that  
7 makes eminently good sense. They are -- these threshold  
8 issues are so interrelated I think it would make the  
9 briefing actually easier at that point, even though we'll be  
10 briefing at one time more issues.

11 This is what was always contemplated from the very  
12 beginning that all of these issues would be briefed at the  
13 same time. The fact that there is now going to be a  
14 consolidated complaint I think leads to the urgency of that  
15 decision.

16 THE COURT: Continue, please.

17 MR. GOLDEN: Your Honor, just it wasn't clear to  
18 me that at this point of the hearing we were going to  
19 debate, not debate the disputed stipulations of fact as  
20 Mr. Steinberg said. There are only seven disputed  
21 stipulations of fact put forward by the GUC Trust and the  
22 unit holders.

23 I tried to catch Mr. Steinberg's language where he  
24 referred to those seven as either being argumentative or  
25 drawing legal conclusions. I'm not going to argue that

1 point I'll just ask Your Honor to remember those comments  
2 when you actually get an opportunity to review the seven  
3 disputed facts. All I'll say now is they are neither  
4 argumentative or do they call for legal conclusions.

5 THE COURT: Okay.

6 MR. GOLDEN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Mr. Flaxer?

9 MS. RUBIN: Your Honor?

10 THE COURT: I'm sorry.

11 MS. RUBIN: (Indiscernible - 00:47:29).

12 THE COURT: Well, Ms. Rubin, you're closer in  
13 position to Mr. Golden than anybody aren't you? Come on up  
14 now and then Mr. Flaxer can be heard after you.

15 MS. RUBIN: Good morning, Your Honor, I'm Lisa  
16 Rubin of Gibson, Dunn & Crutcher for the GUC Trust, and with  
17 apologizes to Mr. Flaxer for jumping the line.

18 I just briefly wanted to address the Court --

19 THE COURT: Pull the mic closing to you if you  
20 would, please, Ms. Rubin.

21 MS. RUBIN: Sure. Sure.

22 Your Honor, we have a couple of points that we  
23 just wanted to underscore from Mr. Golden's preparation.

24 You asked Mr. Golden whether deferring oral  
25 argument would help, and I want to underscore here that the

1 answer is no.

2 To be as clear as we can be with Your Honor in  
3 briefing the procedural due process issue and the remedy we  
4 wholly anticipate that New GM is going to tell you there was  
5 not a procedural due process violation. That is not a shock  
6 to anyone in this courtroom. But at the same time they're  
7 going to say that if there is a remedy at all that remedy  
8 should come from the GUC Trust. It would cut the GUC Trust  
9 and the unit holders off at the knees to not then be able to  
10 say to Your Honor that that is not in fact the case because  
11 those claims would be equitably moot.

12 To be able to -- or to be forced rather, Your  
13 Honor, to litigate the remedies issue without also being  
14 able to raise the equitable mootness points with Your Honor  
15 we think is fundamentally unjust.

16 The other thing that I would say, Your Honor, is  
17 there is widespread agreement that we should defer the  
18 assumed versus retained liabilities question, or as  
19 designated counsel has corrected me on multiple occasions  
20 assumed versus retained versus wholly independent and  
21 entirely unrelated to the sale order and the sale agreement.

22 But I want to emphasize for Your Honor that the  
23 reason we as the GUC Trust believe that should be deferred  
24 isn't just a question of administrative ease for the parties  
25 or judicial efficiency, it's an interpretive question, it

1 is a mixed question of law and fact that necessitates  
2 comparing the claims made by the lead plaintiffs against the  
3 sale agreement and the sale order.

4 It would be fundamentally unfair to construe what  
5 those claims are and whether they are in fact assumed versus  
6 retained versus wholly independent on the basis of 102  
7 existing ignition switch actions that are going to be  
8 superseded and significantly modified by a single unitary  
9 complaint.

10 To have to litigate what those claims are now when  
11 those aren't if claims that lead plaintiffs are going to be  
12 articulating in the MDL seems to me to invite this briefing  
13 all over again once they amend.

14 And with that, Your Honor, I don't have anything  
15 further for the Court.

16 THE COURT: Okay. Thank you, Ms. Rubin.

17 MS. RUBIN: Thank you.

18 THE COURT: Mr. Flaxer?

19 MR. FLAXER: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. FLAXER: I heard your preliminary rulings loud  
22 and clear.

23 What I would observe is that we think first of all  
24 that the areas which where we believe discovery should take  
25 place before Your Honor rules on the due process issue are

1 highly relevant and very material. And I'm specifically  
2 focusing on whether or not senior executives had knowledge  
3 of this what I'll call the ignition switch defect.

4 We conceded that we think based on our  
5 understanding of the law that the extensive knowledge of  
6 I'll call them lower down employees at GM should be  
7 sufficient, but we're very worried about the remedy issue  
8 because we could win in a sense a pyrrhic victory by having  
9 Your Honor rule based on the stipulated facts that there has  
10 in fact been a due process violation but not grant us the  
11 ability to pursue claims against New GM based on New GM's  
12 view on what I'll call contextual due process and argue as  
13 we know they will argue that even if Your Honor finds that  
14 there's been a due process violation that the only remedy  
15 should be a claim against Old GM.

16 And we believe that if we could establish  
17 knowledge of senior executives -- and I'm focusing primarily  
18 though not exclusively on getting up to the level of general  
19 counsel of North America and then up to the level of general  
20 counsel of the company as a whole -- that if that could be  
21 established then we think that would inform Your Honor's  
22 view on what the remedy should be and in our view it would  
23 -- we think it makes a stronger case for imposing a remedy  
24 against New GM and permitting us to pursue those claims.

25 The Valucas report has formed the basis for a lot



1 of what's before you on stipulated -- stipulated facts. It  
2 is surely long and contains an enormous amount of detail.

3 What left us very concerned was for whatever  
4 reason a striking absence of discussion of what senior  
5 people knew.

6 It's not that the Valucas report says we  
7 interviewed, you know, Michael Robinson and Mr. Osborn and  
8 some of the others and concluded that they didn't have  
9 knowledge. The trail just stops cold and doesn't quite go  
10 there.

11 So one example just to sort of paint the picture  
12 for Your Honor, if I may, and I believe we discussed this in  
13 our letter, is that from November of '08 to September of '09  
14 Michael Robinson was the general counsel of North America,  
15 which we think is a very senior position. It appears from  
16 the Valucas report that the head lawyers for safety and the  
17 head lawyers for consumer products reported to him, and it  
18 appears from the Valucas report that there were indications  
19 that those individuals one level down had knowledge.

20 We believe -- we can't understand why the report  
21 didn't go to the next level. Maybe it's in his interview  
22 notes, but it's not in the report about what Mr. Robinson  
23 may have been told.

24 It turns out that Mr. Robinson was one of the  
25 individuals who was let go because of the ignition switch

1 defect issues, which seems to us suggests very strongly that  
2 there was some involvement there by him, otherwise why was  
3 he left go over this?

4 So we were not able -- you know -- well, let me go  
5 back. We requested stipulations about Mr. Robinson's  
6 knowledge based on what I'll call a negative inference from  
7 the Valucas report.

8 Now the Valucas report is not evidence so in a way  
9 I'm importing a concept that applies to evidence, but it  
10 really is not evidence, it's in the category I guess of  
11 hearsay, but having said that since we've all been using the  
12 Valucas report as the basis for this effort it seemed  
13 necessary and important for us so that Your Honor would be  
14 able to look at the agreed facts and the disputed facts and  
15 understand the areas of concern that we had better at least  
16 ask those questions and if GM says no that's exactly the way  
17 Your Honor contemplated the process and then Your Honor  
18 could see what areas were areas where at least one of the  
19 parties felt that there needed to be more investigation.

20 Another example would be the Delphi settlement in  
21 2007. One of the items on the list of warranty issues that  
22 was resolved is called ignition switch failure. Each of  
23 those items involved at least \$1 million of claims. The  
24 Valucas report again we think is -- leaves one feeling to  
25 want to know more when you read what is said about it. You

1 would want to know how much money was allocated to the so-  
2 called ignition switch failure. You'd want to confirm that.

3 When the Delphi settlement refers to ignition  
4 switch failure it's in fact referring to what we've all been  
5 calling the ignition switch defect. I think it's above 99  
6 percent likely that it is, but it doesn't state that in the  
7 report, I don't know why. GM, which it was absolutely their  
8 right would not stipulate to that.

9 We think -- and it seems very likely that a  
10 settlement of this magnitude, which is we understand the  
11 entire settlement, was a settlement of half a billion  
12 dollars or in that range, that Your Honor should at least  
13 have the opportunity to have a record that explores those  
14 two narrow issues. I think they're very important, but I  
15 think targeted discovery could get at them.

16 It turns out now that Judge Furman has authorized  
17 at the request of the what was then the temporary lead  
18 counsel and now two-thirds of which are the lead counsel,  
19 now the materials underlying the Valucas report as well as  
20 documents turned over to the government are going to be  
21 produced fairly soon in the District Court proceeding.

22 I'm going to put aside for the moment the obvious,  
23 you know, problem of documents turned over by the government  
24 are surely hundreds of thousands of pieces of paper. Let  
25 put that on the side for the moment.

1           It seems to me that if these materials are being  
2       produced so another judge in a parallel proceeding is going  
3       to have them any way and Your Honor is ruling on issues  
4       where we think information in those materials would be  
5       highly germane you ought to have it too. You should be --

6           THE COURT: Pause, please, Mr. Flaxer, because  
7       what you just said informed my discretion that I would not  
8       want to interfere with Judge Furman's decision to authorize  
9       discovery of that character.

10          But you know I used to be a general purpose  
11       litigator before I was a bankruptcy litigator and --

12          MR. FLAXER: I actually know that.

13          THE COURT: Right.

14          MR. FLAXER: I remember that.

15          THE COURT: And I know what document review takes,  
16       it's a massive exercise, and it's a massive exercise in what  
17       used to be the norm for litigation in the federal courts  
18       back in the days of 10(b)(5) cases and things like that, and  
19       reading all of those documents is going to be a massive and  
20       time-consuming undertaking isn't it?

21          MR. FLAXER: The answer is yes with a but, sort of  
22       two buts.

23          One is that, Your Honor, you will control the  
24       process every step of the way. So if it turns out that this  
25       is becoming -- it is going to cause undue delay Your Honor

1 can control that process. Your Honor could rule, for  
2 example, I'll authorize review of the Valucas report notes  
3 but nothing else for now.

4 It also seems to me that with modern technology of  
5 which other lawyers in this room are much better at than I,  
6 I assure you, but with the use of, you know, search terms if  
7 the document says I'm guessing they are are in searchable  
8 format or if they're not lots of lawyers in this room, as my  
9 firm, also does have technology for converting documents  
10 into searchable format. I understand that in large class  
11 action cases it's customary to have a centralized, you know,  
12 in a software system and everything goes up on that and it  
13 all becomes, you know, searchable.

14 That if the subject matter is limited -- and I  
15 know there was a view that what we were suggesting wouldn't  
16 be so limited -- but actually we're basically not seeking  
17 discovery on most of what's in the -- in the Valucas report,  
18 we're really focusing on senior level knowledge and what --  
19 who -- and included in that I guess is senior level  
20 involvement in the Delphi settlement. That I think those  
21 are actually limited compared to the vast scope of the  
22 Valucas report.

23 And with -- so again with the available technology  
24 and Your Honor's ability to control the process every step  
25 of the way and we'll be back here no more status conferences

1 Your Honor could say this set of documents is out it's going  
2 to take too long, or I've authorized this but no more,  
3 meaning I know you folks want to take -- want to take a  
4 couple of depositions but I'm not going to authorize that.

5 You -- so I think with those two items on the  
6 table I actually don't think the delay problem is as large  
7 as it is being suggested, and I think in balancing the needs  
8 of the parties and the benefit of doing this right the first  
9 time and letting Your Honor have a more complete record as  
10 balanced against the delay, and it surely will cause some  
11 delay, I'm not going argue that it won't, we think, you  
12 know, unbalance it's better for the process.

13 I suggested -- we're talking about two months, at  
14 one point Mr. Steinberg said to me you're talking about six  
15 months. Even if he's right and it's six months -- and I  
16 don't think it'll be, maybe it's four -- but even if he's  
17 right I still think it's worth it for you to have a more  
18 complete record.

19 THE COURT: Okay. Thank you.

20 MR. FLAXER: Thank you, Your Honor.

21 THE COURT: I want to give people opportunities to  
22 reply to any remarks made after they spoke. That would mean  
23 opportunities to respond to what Mr. Flaxer said, but I also  
24 want to get my arms better around the extent of agreement or  
25 disagreement with what Mr. Golden and Ms. Rubin said.

1 First you, Mr. Steinberg.

2 MR. STEINBERG: Your Honor, I have only brief  
3 remarks.

4 First we -- we sent Your Honor yesterday, to the  
5 extent that Your Honor didn't have it, Judge Furman's order  
6 of August 15.

7 THE COURT: I've read it.

8 MR. STEINBERG: And that order does describe what  
9 will be discussed at the status conference scheduled --

10 THE COURT: Which is on September 4 if I recall.

11 MR. STEINBERG: That's correct, Your Honor.

12 And paragraph 1 says one of the items of the -- to  
13 be discussed is an initial discovery plan to produce those  
14 relevant non-privileged documents previously provided by New  
15 GM and the other defendants to the extent applicable to  
16 Congress and to the National Highway Traffic Safety  
17 Administration.

18 So paragraph 1 is not talking about the Valucas  
19 report or what's related to the Valucas report.

20 Separately the Valucas report is discussed in  
21 paragraph 7 as another agenda item to be discussed, and  
22 that's he wants to hear the parties' position on the  
23 production of documents relating to the May 29, 2014 report  
24 by Anton (ph) Valucas and a process for addressing disputes  
25 regarding same.

1           So there was clearly a distinction between how the  
2           Valucas report would be treated and what was already  
3           produced to Congress and NHTSA.

4           And I think Mr. Flaxer in his preparation sort of  
5           merged the concepts and I wanted to just be precise as to  
6           what Judge Furman was going to be hearing from lead counsel  
7           and from New GM on September 4th at the status conference.

8           The second is without trying to get into too much  
9           of the weeds of the Delphi settlement, our letter to the  
10          Court on Friday highlighted what the Valucas report said  
11          about the Delphi settlement.

12          And, Your Honor, just so you know to put into  
13          context Mr. Flaxer's remarks, the Delphi settlement broke  
14          out six separate items for a specific resolution and then  
15          they had a list of 43 items on the schedule. And what he's  
16          referring to is the line item on one of the 43 items on the  
17          schedule.

18          The result of the Delphi settlement was that  
19          Delphi as a debtor was supposed to pay Old -- New GM  
20          \$41 million and then the next year that settlement was  
21          amended where GM waived any payment of the money.

22          So to the extent that one wants to put into  
23          context what the Delphi settlement is about in connection  
24          with this dispute we think those are additional relevant  
25          facts.



1           The -- with regard to what Mr. Golden said about  
2           the purpose the MDL complaint as it relates to the issues  
3           that people want to brief now, I will point out that both  
4           him and Mr. Flaxer were pointing to the remedy section, not  
5           the due process section.

6           The equitable mootness doctrine I think has no  
7           relevance at all to the -- to the -- whether there was a due  
8           process violation or not.

9           The remedy section assumes that there was a due  
10          process violation and wants to look to see whether as a  
11          result of there being a due process violation what should be  
12          the remedy that's fashioned as a result.

13          THE COURT: Are you sure about that,  
14          Mr. Steinberg? Because I want to try very hard not to  
15          prejudge issues, not to decide anything in advance, but  
16          don't due process issues break down into multiple  
17          components? One an asserted denial of due process to be  
18          heard on the form of the sale order or on the underlying  
19          decision as to whether or not I protect New GM from  
20          successor liability types of contentions, and then apart  
21          from that in the alleged denial of due process on the  
22          opportunity to file claims of this character against the Old  
23          GM estate back when there was a full pot of money to do it.

24          MR. STEINBERG: I think, Your Honor, the answer to  
25          that is no, because the issue that is being teed up for Your

1 Honor is whether there was a due process violation in  
2 connection with the sale order. The sale order was entered  
3 in July of 2009, the schedules in this case were not filed  
4 until three months later, the bar date was not entered into  
5 until a later period of time, and the issue as to whether  
6 they should be able to -- where there's a remedy because  
7 they didn't file a claim or didn't have notice of a claim is  
8 different than whether they got notice of a sale.

9 The issue of what the liabilities were of Old GM  
10 at the time of the sale is I believe -- and you'll see in  
11 our brief differently -- but the concern about whether there  
12 was a due process violation then becomes with regard to the  
13 bar order, the schedules, and what was known or not known,  
14 that we believe is strictly an Old GM issue because all of  
15 those events took place after July of 2009, months  
16 afterwards, they were not New GM implicated issues.

17 And our understanding is that the only thing that  
18 Your Honor is being asked to review was the due process  
19 issues relating to the June -- July 5th events, not anything  
20 that happened afterwards.

21 With regard to the timeliness issue I will point  
22 out, and just so that everybody appreciates it, that  
23 Mr. Golden has said that equitable mootness is relevant to  
24 the remedies issue because if we can't file a claim against  
25 -- if the plaintiffs can't file a claim against Old GM maybe

1 that should color how Your Honor deals with the issue.

2 Without trying to address whether I think that's  
3 relevant or not I will point out to Your Honor that one of  
4 the things that we keep on footnoting that Your Honor is not  
5 being asked to determine as a threshold issue, even as part  
6 of the equitable mootness issue, are the Pioneer factors,  
7 right? So that they're arguing that equitable mootness  
8 prevents the filing of a claim against the estate at this  
9 point in time. But we keep on putting as a footnote that  
10 the issue of whether you can file a late-filed claim is not  
11 before the Court.

12 And so I'm not sure why they think that doing  
13 equitable mootness colors the remedies but the Pioneer issue  
14 didn't color the remedies.

15 But we've sort of split that baby in half and  
16 equitable mootness came in as an agreement by all the  
17 parties to say well we'll brief another issue, but it wasn't  
18 originally part of your first issues.

19 And then I just go back to the -- what I said  
20 before, which is that whether they can file a claim against  
21 Old GM or not has nothing to do, we believe, as to whether  
22 there was a due process violation that insofar as the  
23 noticing of the 363 sale motion.

24 So we think that we should be going forward on the  
25 briefing on the issues that we talked about and that there

1 should be no discovery and no discovery is necessary, and  
2 certainly limited additional targeted discovery and document  
3 discovery is way beyond what Judge Furman has talked about  
4 at all at the last conference and is not on the agenda for  
5 this conference.

6 THE COURT: All right, thank you.

7 Mr. Esserman?

8 MR. ESSERMAN: Your Honor, Sandy Esserman on  
9 behalf of designated counsel.

10 To a certain extent Mr. Golden informed me of why  
11 we don't need to wait to get to the due process issue. He  
12 recited the fact that 2.2 million vehicles were subject to  
13 the ignition switch defect and perhaps there could be  
14 another I thought he said 16 million as a result of recalls.  
15 Regardless of whether it's 2 million or 16 million the issue  
16 of due process has been teed up. We do not need to know the  
17 precise number, although we think we know, of ignition  
18 switch recalls that are defective here. We don't need to  
19 wait until we see the amended complaint to get to that  
20 issue.

21 We have the record ready to go, we have the record  
22 ready to decide whether or not there's a due process  
23 violation. It is ready to be tendered to the Court. I know  
24 GM probably already has their brief in the can. We think it  
25 would inform everybody greatly to get that issue decided.

1 THE COURT: Let me interrupt you, please,  
2 Mr. Esserman.

3 MR. ESSERMAN: Yes.

4 THE COURT: As I understood the back and forth  
5 that was agreed upon by the parties and that I so ordered  
6 your guys have the next brief that's due.

7 MR. ESSERMAN: Yes.

8 THE COURT: And it's due in --

9 MR. ESSERMAN: September 22?

10 THE COURT: -- a week or two.

11 MR. ESSERMAN: September 22 I thought.

12 THE COURT: Correct, September 22. So it's more  
13 than a week or two, in fact it's over a month.

14 But if I were to agree with Mr. Golden that I  
15 should keep all of the issues on the table and just delay it  
16 to await the amended complaint the practical effect of that  
17 would be to give your guys in the first instance more time  
18 and then presumably a corresponding opportunity for those  
19 who have a different view of the world to reply at a later  
20 date.

21 I don't see Mr. Steinberg filing another brief for  
22 a while, unless I misunderstood the schedule you guys agreed  
23 to.

24 MR. ESSERMAN: I think that's correct.

25 October 10th is what I've been informed by Mr. Inselbuch, is

1 the next --

2 THE COURT: Yeah, and that's what I had written in  
3 my calendar when I had looked at the underlying so ordered  
4 letter and it was confirmed to me by somebody this morning.

5 I understand your underlying conceptual point but  
6 I'm trying to integrate that into the schedule that we now  
7 have in place.

8 MR. ESSERMAN: It just seems to me, Your Honor,  
9 with everything done that needs to be done to decide the due  
10 process issues and trying to fit it in the fabric of the  
11 MDL, is this Court and the MDL court going to be benefited  
12 by your ruling on due process? And I think the answer to  
13 that is yes. And sooner rather than later. Sooner for a  
14 variety of reasons.

15 No matter which way you come out I think -- I  
16 think everybody is going to be benefited by that ruling.  
17 And with the record we've got before Your Honor we believe  
18 that you can have that issue teed up and ready to decide.

19 I understand it's not going to be a bench ruling,  
20 these are complicated issues, they're going to take a lot of  
21 thought on your part and you will rule when you are ready to  
22 rule, we all know that and we respect that, and you need to  
23 be given time to contemplate the issues, but having said  
24 that, that decision will advance the process tremendously.  
25 And since I think we're all ready to go now to hold some --

1 to hold it up at this point we think doesn't make any sense  
2 and we're ready -- we're ready to have that issue decided.

3 THE COURT: Okay. Thank you.

4 MR. ESSERMAN: Thank you.

5 MR. WEISFELNER: Your Honor, I apologize.

6 THE COURT: Sure, come on up, please,  
7 Mr. Weisfelner.

8 MR. WEISFELNER: Your Honor, I want to tell you  
9 why I think the position that Mr. Golden and Ms. Rubin took  
10 ought to in effect be overruled. I think we've come full  
11 circle.

12 When designated counsel was first before you when  
13 I spoke on behalf of designated counsel our position was  
14 there was one issue and one issue only that ought to go  
15 forward first, and that's whether or not there's been a  
16 denial of due process in connection with the sale order.

17 That list of threshold issues grew, and in  
18 particular the question of equitable mootness was proposed  
19 by the GUC Trust and the GUC unit owners, and other issues  
20 got proposed by other parties. And Mr. Golden gave you two  
21 reasons why in his view none of the threshold issues ought  
22 to go forward at the current time.

23 And the first thing he raised was the filing of  
24 the consent -- the near term filing of the consolidated  
25 amended complaint. And I'm sitting here trying to figure

1 out what it is about a consolidated amended complaint and  
2 what it could possibly say that has an impact on equitable  
3 mootness.

4 Their position, as we understand it, as is  
5 reflected in their stipulations, is that any claim -- any  
6 claim to be asserted against Old GM, which is any claim to  
7 be asserted against the GUC Trust, is equitable moot. Any  
8 claim.

9 So to suggest to Your Honor that they're in a  
10 better position to brief that issue and that you're in a  
11 better position to adjudicate that issue based on the  
12 amended consolidated complaint seems to me to be lacking in  
13 merit, with all due respect.

14 Now the second point they raised quite frankly I  
15 think is a closer call and it reflects Your Honor's  
16 tentative that to the extent that we raise the question of  
17 was there a denial of due process, the next question is --  
18 and that designated counsel and GM agree on -- is that we  
19 ought to go forward with threshold issue 1 and 2, 2 being  
20 remedy or what we colloquially in a short form refer to as  
21 remedy.

22 Said a different way it's if Your Honor finds that  
23 there's been a violation of due process what's the  
24 appropriate remedy? Frankly we thought it's a no-brainer.  
25 If due process has by violated Supreme Court authority



1 teaches us that the order that was entered in violation of  
2 due process can't be held against the party whose due  
3 process was denied.

4 So we always thought the remedy came naturally  
5 from a determination of violation of due process.

6 But Mr. Golden says, well, wait a second, we're  
7 concerned that someone is going to argue that if there was a  
8 due process violation the remedy ought to be something other  
9 than. Well then the order is not applicable as written, and  
10 in fact we ought to find the remedy against potentially old  
11 GM which implicates the GUC Trust. And that's when the GUC  
12 Trust insists that they want the notion of equitable  
13 mootness to come forward.

14 And, Your Honor, I think we've conflated issues.  
15 It is desperately important for the plaintiffs and I think  
16 desperately important for Judge Furman and the process  
17 contemplated there to get the train moving as quickly as  
18 possible or at least that many of the cars of the train as  
19 we can get moving as quickly as possible.

20 I can see the argument that says all of us would  
21 benefit more from an amended consolidated complaint to  
22 determine, to use I think Your Honor's view, what's a red  
23 light? Things that are implicated by the sale order, no  
24 question about it under GM's theory. What's a green light?  
25 Things that were never implicated by the sale order. Gary

1 Peller's arguments comes to mind, although in a different  
2 procedural context. And what's a yellow light? I concede  
3 that reading the complaint helps that threshold issue, which  
4 is why we agreed to defer it, but there's nothing about the  
5 complaint that's going to impact equitable mootness, that's  
6 a legal argument.

7 And now I'll be perfectly frank in terms of what  
8 our motivations are. I want to be able -- we want to  
9 collectively be able to write a brief to you that says, Your  
10 Honor, due process was violated in this context and the only  
11 proper remedy for a violation of due process is that the  
12 sale order, or more particularly the sale order injunction,  
13 can't be imposed against the people whose due process rights  
14 were violated. Period, end of a very long story, everything  
15 else is in front of Judge Furman.

16 What I don't want to have to brief simultaneously  
17 is if I'm wrong and due process -- due process wasn't  
18 violated or the appropriate remedy for a violation of due  
19 process is not that the sale order injunction doesn't get  
20 applied to me but now somehow the only recourse I have is  
21 against Old GM.

22 THE COURT: Pause, please, Mr. Weisfelner.

23 You've been around the block a couple of times.  
24 Don't lawyers write briefs with an if I'm wrong second and  
25 third and fourth argument following the first?

1 MR. WEISFELNER: They do. And, Your Honor, so  
2 also could the GUC Trust and the unit holders, and they too  
3 could argue if you find that due process wasn't violated or  
4 you determine that it was violated and the appropriate  
5 remedy isn't what Weisfelner thinks is the obvious remedy  
6 don't send them knocking at our door because it's equitable  
7 moot.

8 But do we have to hold up the train on the first  
9 issue, which is due process, for an amended consolidated  
10 complaint that isn't going to inform their briefing on that  
11 topic?

12 Their position is there's no claim that could ever  
13 be asserted against the GUC Trust no matter what your  
14 amended complaint ultimately says that isn't equitably moot.  
15 Okay, got it. Their position is acknowledged for the  
16 record. We can all now brief due process with that position  
17 in mind.

18 I don't understand, and they're the only party  
19 sitting here today who's telling you delay the whole train.  
20 We're agreeing split the train, let due process and remedy  
21 go forward. To our mind that's what the main constituents  
22 want, plaintiffs and defendants, all of the plaintiffs, all  
23 of the defendants. The only party that's telling you to  
24 slow this train down is the GUC Trust and certain unit  
25 holders. And I respect their position, but they're

1 rationale doesn't bear appropriate focus.

2 There's nothing about what's happened in the MDL,  
3 and the only thing that's happened is the judge has said he  
4 wants an amended consolidated complaint by a date certain  
5 that's going to inform their legal argument. They just  
6 don't want to see --

7 THE COURT: Well isn't it going to inform  
8 everybody's legal argument?

9 MR. WEISFELNER: On other threshold issues other  
10 than due process.

11 Our point of view is yes, to the extent it impacts  
12 legal argument on things like is this a claim against New GM  
13 that stands all by itself? Is this a claim against Old GM?  
14 Is it impacted by the sale order because it was either  
15 retained or assumed liabilities? We conceded the point.  
16 Your Honor will be better off, we'll all be better all by  
17 seeing the amended consolidated complaint.

18 But what I can't fathom is why we need to wait now  
19 for the amended consolidated complaint either to adjudicate  
20 due process. We worked for weeks -- actually months on the  
21 stipulations. We have a record ready to go, and I don't  
22 understand why we need to move forward today on equitable  
23 mootness. And the only person -- the only people that are  
24 here, Your Honor, telling you anything different is the GUC  
25 and the unit holders. Everyone else is in agreement.

1 Let's go forward with issue 1, due process, issue  
2 number 2, remedy. And the only people that say no, stop the  
3 entire train are Mr. Golden and Ms. Rubin, and they tell you  
4 their rationale is we should all wait to see an amended  
5 consolidated complaint. Really, on your equitable mootness  
6 position? How could it possibly inform your decision?

7 So, Your Honor, we would respectfully request that  
8 the main litigants in this case and their point of view be  
9 afforded deference. New GM, designated counsel, even the  
10 outlier Groman plaintiffs all believe that we ought to go  
11 forward with issue 1 and 2 and not defer all four issues.  
12 But go forward with 1 and 2, defer 3 and 4, and give Your  
13 Honor the briefing on the fraud on the Court standards.

14 Thank you.

15 THE COURT: All right, thank you.

16 Has everybody had a chance to speak their peace?  
17 Mr. Golden, limited of course to the new stuff your  
18 opponents laid on you.

19 MR. GOLDEN: Your Honor, Mr. Weisfelner makes a  
20 big point that the real parties in action, the plaintiffs  
21 all --

22 THE COURT: Pull that mic close to you, please,  
23 Mr. Golden.

24 MR. GOLDEN: -- all the plaintiffs and the  
25 defendants want to go forward with 1 and 2 and it's only the

1 GUC Trust unit holders and the GUC Trust that are insisted  
2 upon going forward with equitable mootness now. But maybe  
3 that's because it's only the GUC Trust and the unit holders  
4 who have the right to raise the argument about equitable  
5 mootness. So I wouldn't expect New GM or the plaintiffs to  
6 be that concerned about when and in what context we can  
7 raise equitable mootness.

8 You asked Mr. Weisfelner a very what I thought a  
9 germane question, lawyers all the time argue in the  
10 alternative. He begrudgingly acknowledged that but said  
11 well so could -- so to could the GUC Trust unit holders and  
12 the GUC Trust argue in the alternative. Except by virtue of  
13 the way they tried to separate the threshold issues we are  
14 really not going to be able to argue that in the  
15 alternative. So let's just go down the path they want to  
16 just brief and have oral argument on the threshold issue  
17 regarding procedural due process and the related remedies.

18 We would want to argue to the extent that it was  
19 determined that there was a violation but that the remedy is  
20 not going to be against New GM we want to defend against the  
21 remedy being against the GUC Trust and we would be arguing  
22 equitable mootness. But they don't want us to argue  
23 equitable mootness now, they want that issue deferred until  
24 a later point in time.

25 So it's not like they say you could argue in the

1 alternative, but you can argue in the alternative with one  
2 arm tied behind your back because you're not going to be  
3 able to brief defensively in the context of the procedural  
4 due process and remedies threshold, you're not going to be  
5 argue equitable mootness. That is inherently unfair.

6 We've heard a lot about the delay. We've been at  
7 this months just trying to get to a stipulation of facts. I  
8 just don't see how this 60 days when everybody acknowledges  
9 that having a consolidated complaint in front of us will  
10 inform everybody's decision and then we'll be able to brief  
11 all four of the threshold issues simultaneously at the same  
12 time as was always contemplated by the first scheduling  
13 order and by the second scheduling order.

14 Thank you, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, I'm  
16 going to take a brief recess. I would like you all back  
17 here by 11:25 on the clock up there. I can't guarantee you  
18 that I'll be ready then, but please be back in the courtroom  
19 at that point. We're in recess.

20 (Recess at 11:15 a.m.)

21 THE CLERK: All rise.

22 THE COURT: Have seats, please.

23 (Pause)

24 THE COURT: Ladies and gentlemen, I'm denying the  
25 Groman plaintiffs request for a delay of the briefing to

1 await the discovery that they wish at this point in time  
2 without prejudice of course to their rights to get discovery  
3 of that character or of any other character down the road.

4 And with respect to the schedule for the briefing  
5 I am kicking the briefing out to await the filing of the  
6 consolidated and amended complaint but with respect to all  
7 five issues, or if you prefer all but the pure legal  
8 standard for what it takes to somehow fraud on the Court,  
9 and not just two of the four as was advocated by several of  
10 the parties, most significantly designated counsel.

11 The basis for the exercise of my discretion in  
12 this regard follow.

13 Turning first to the discovery aspect I  
14 telegraphed much of my thinking with respect to that when I  
15 discussed my tentative views, and after hearing the argument  
16 nothing has caused me to change from those views.

17 The issue in my thinking is not whether discovery  
18 of the type that's requested there ultimately will become of  
19 significance and ultimately become necessary or desirable.  
20 I assume without deciding that it ultimately will be one or  
21 the other.

22 The issue now however is whether that discovery is  
23 important enough at this point in time and how it presently  
24 should be weighed as part of the balancing that all agree,  
25 including Mr. Flaxer, is essential here in terms of meeting



1 the needs and concerns of many parties and ultimately  
2 reaching a just result on what all describe as threshold  
3 issues, describing it as such because they are threshold  
4 issues.

5 We decided to go with threshold reasons -- or  
6 threshold issues -- excuse me -- for a reason or many  
7 reasons, including the potential, if not certainty, that  
8 discovery would slow the train down, to use a metaphor that  
9 we've used several times today.

10 I think the price to be paid of having that  
11 discovery now is too high, and that taking the discovery now  
12 would too materially adversely affect the needs and concerns  
13 of the bulk of the parties in the case.

14 Then we get to the briefing. Nobody disputes the  
15 benefits to you all and to me of having the amended  
16 complaint as laying out specific matters that we all need to  
17 address, and potentially, although I don't know if I have  
18 complete optimism on this, vis-à-vis, taking issues off the  
19 table.

20 Nobody disputes that at least two-fifths of the  
21 threshold issues should be deferred, but then you differ  
22 with respect to the remaining issues and your diverging  
23 views as to whether I should decide two of them or perhaps  
24 three of them before deciding them all, all of course in  
25 this context being threshold issues fully understanding that

1 threshold issues may not be the end of the story.

2 I can't help but come to the view that your  
3 recommendations in that regard are colored by your own  
4 clients' tactical needs and concerns. That of course is  
5 what lawyers are paid to do, and I find no fault with that,  
6 but of course judges have agendas different than advocates  
7 do.

8 The designated counsel and Mr. Weisfelner was the  
9 most vigorous and if you will obvious in doing so would like  
10 to get -- would like to litigate issues on their terms, and  
11 conversely Mr. Golden would like to do the same, and in that  
12 connection would prefer not to be thrown under the bus.

13 My agenda is to get a just result and to do so in  
14 a way so that the teeing up of the issues doesn't come at  
15 the price of material prejudice to any party.

16 As an analytic matter Mr. Weisfelner was right  
17 that a subset of the issues don't require an amended  
18 complaint, but Mr. Golden and Ms. Rubin made the stronger  
19 point that dealing with some issues without dealing with all  
20 of them is fundamentally unfair.

21 It may be that I'm going agree with parties on the  
22 left side of the courtroom to a greater degree after all of  
23 the issues are litigated or it may not be, but the important  
24 thing is that at this point I can't put a thumb on the  
25 scales of the mechanisms by which we're going to litigate

1 these issues to allow certain parties' issue to be litigated  
2 without allowing everybody's petitions to be litigated. And  
3 that is particularly so since as you were able to since from  
4 our colloquy the chances of my deciding some issues without  
5 dealing with all of them and of even hearing oral argument  
6 with respect to some issues without hearing all of them are  
7 remote.

8 Even assuming, as I do for the sake of this  
9 discussion, that all of the issues aren't wholly related and  
10 that some could, if you wanted to badly enough, be decided  
11 in isolation without deciding the remainder. The risks of  
12 doing that in a way that isn't unfair to other parties are  
13 too great for me to tolerate.

14 I have no doubt whatever that I would need to get  
15 all of the threshold issues, all five of them briefed and  
16 argued before I'd issue a ruling on any of them, and that  
17 comes at a price to you all and it comes at a price to me  
18 and it comes at a price to Judge Furman.

19 I was originally sympathetic to the need to get  
20 the train moving, and I forgot whether I made the point  
21 first or Mr. Weisfelner did, but certainly getting the train  
22 moving is a laudable goal. But the issue is not when the  
23 train leaves but when it arrives, and given the needs to  
24 maintain fairness to all I need to focus on the latter  
25 concern, when the train arrives, and to insure that when it

1 does arrive it does so in a way that doesn't put a thumb on  
2 the scales as part of the briefing that's going to help me  
3 do my job.

4 Ultimately folks as important as moving this  
5 forward is to everybody in this room doing so piecemeal  
6 comes at too high a price and nothing is more important to  
7 me than maintaining the overall fairness of the briefing of  
8 the issues as they go forward.

9 So you're to dust off the letter scheduling your  
10 briefs that you gave me a couple a weeks ago and that I so  
11 ordered and you're to fine tune the dates in there to delay  
12 the response by the designated counsel by a time reasonably  
13 necessary to take into account what the amended complaint  
14 says and so correspondingly adjust the time for replies to  
15 be filed.

16 I envision a change in that letter to the minimum  
17 extent reasonably necessary to take into account the amended  
18 complaint. Assuming that it's as reasonable as the last one  
19 I'll so order it promptly thereafter.

20 Not by way of reargument I'll hear follow up from  
21 what I just said.

22 MR. STEINBERG: Your Honor, I assumed, but I  
23 wanted to make it clear, that the entire briefing schedule  
24 is going to change so the opening brief itself will have to  
25 be reset as well too. I think when Your Honor went through

1 what was going to be changed as a result of the MDL you said  
2 the designated counsel and the reply, but I assume the  
3 opening brief as well will be.

4 THE COURT: Yes. Anything else?

5 All right, hearing nothing else then we'll turn to  
6 what else we have on the agenda for today. To what extent  
7 do we have stuff of that character, Mr. Steinberg?

8 MR. STEINBERG: Your Honor, I think what we have  
9 on the agenda is the other two motions that were filed.

10 THE COURT: Okay. And I think I telegraphed my  
11 thinking on that. I would like to get work on that under  
12 way, but I don't want to do it in a way that's unfair to  
13 anybody. What's your recommendation?

14 MR. STEINBERG: Well in connection with the  
15 prepetition accident victim case and the non-ignition switch  
16 motion we think that the same procedures that were done in  
17 May with regard to the ignition switch action should follow,  
18 which is are the plaintiffs in those actions going to agree  
19 that Your Honor has jurisdiction under the -- your sale  
20 order and agree voluntarily to a stay, and if not they  
21 should file a no stay pleading as to why Your Honor does not  
22 have jurisdiction over the claims that they are asserting.

23 THE COURT: With the sword for your opponents be  
24 carried by the same designated counsel or will it be  
25 different guys?

1 MR. STEINBERG: Well, Your Honor, the -- it may  
2 very well -- well let me say it this way. The prepetition  
3 accident victims case now has on the list four -- only four  
4 cases. One of them we think will be added, but will agree  
5 to an immediate stay, and one of them we think will be  
6 amended to delete the prepetition accident cases and only  
7 deal with the postpetition accidents, which would then leave  
8 us with only three actions.

9 And I think the only person who we've heard from  
10 in connection with this motion is the -- is the person  
11 represented the Powledge -- Mrs. Powledge who filed a letter  
12 to Your Honor and wants to address the Court and filed an  
13 objection -- something labeled as an objection on Friday.

14 THE COURT: Uh-huh.

15 MR. STEINBERG: So it may very well be that we  
16 will be dealing with separate counsel on this as compared to  
17 the overlapping counsel. I think we still have one that  
18 overlaps, but it's a fairly narrow universe.

19 THE COURT: I know you've tried to answer my  
20 question, but what I'm trying to get my arms around is am I  
21 going to have the benefit of your views being opposed by  
22 somebody who knows something about bankruptcy law like the  
23 designated counsel do?

24 MR. STEINBERG: I think that that may be the case,  
25 but I'm not aware of who emerges as a bankruptcy counsel

1 here. Again, I said that the only person who is -- who I've  
2 seen pleadings from is Mr. Davis, and I think he -- my  
3 suggestion to him before the court was that if he was  
4 looking for a relaxation of a briefing schedule because he  
5 thought he had a lot to say then I would accommodate him,  
6 but I think he first had to make the determination as to  
7 whether he was going to stay the activity that was going on  
8 in the other courts with regard to his litigation, and to  
9 the extent that New GM was responding to what he was doing  
10 we would stay as well our efforts to make this Court to  
11 focus as to whether those claims were subject to Your  
12 Honor's sale order and injunction.

13 Prepetition accident cases and especially the  
14 Powledge matter -- I mean Powledge did get notice of the 363  
15 sale because they were a litigant at the time. They did  
16 file proofs of claim in the case, they did settle those  
17 proofs of claim. They did agree to the exclusive  
18 jurisdiction of the Bankruptcy Court with regard to their  
19 settlement.

20 We think that it's pretty clear that Your Honor  
21 should be the one to determine it, but I'm sure they have --  
22 they have a different view or they may have a different  
23 view, but I think they should articulate what their view is.

24 THE COURT: Let me hear from anybody who's on the  
25 other side of those two categories of cases. Those with

1 presale personal injury cases or non-ignition switch  
2 cases --

3 MR. STEINBERG: I will say --

4 THE COURT: -- who want to be heard on scheduling.  
5 But then I also want the parties who I heard before whose  
6 own schedules might be impacted by any of this to have a  
7 chance to be heard if they want to.

8 MR. STEINBERG: The only thing I want to just say  
9 to Your Honor is that on the non-ignition switch motion  
10 cases there are only four in those as well, and one of them  
11 has already indicated to us they will stay, so.

12 THE COURT: I couldn't hear the last part.

13 MR. STEINBERG: There are only four actions with  
14 regard to the other motion, one of the people involved in  
15 those actions has indicated to us they will stay. So we  
16 have a much narrower universe for now in both motions.

17 THE COURT: Okay. But what I guess I want people  
18 to address is whether theirs should be considered to be tag  
19 alongs to be addressed after I deal with this or whether  
20 it's simply a supplemental brief that could be filed along  
21 the same time schedule we're now talking about, especially  
22 since the ruling that I gave a moment ago would seemingly  
23 allow them enough time to catch up.

24 MR. STEINBERG: That's fine.

25 THE COURT: Mr. Weintraub, you got one of those



1 guys?

2 MR. WEINTRAUB: Yes, Your Honor. Thank you.

3 THE COURT: Come on up, please.

4 If my concern was having a guy who knows something  
5 about bankruptcy that would seemingly be mooted if you're  
6 the guy.

7 MR. WEINTRAUB: Well that's very nice of you to  
8 say, Your Honor.

9 My firm represents a group of plaintiffs who are  
10 in the presale category, and the counsel that we're working  
11 with --

12 THE COURT: Did you say presale category?

13 MR. WEINTRAUB: Yes.

14 THE COURT: Uh-huh.

15 MR. WEINTRAUB: And the counsel that we're working  
16 with is the third co-lead counsel in the MDL.

17 I don't know as I stand here today what role we  
18 will have in the Bankruptcy Court on these issues, I need to  
19 speak with my client about that, but if the question is  
20 could we catch up on the new briefing schedule I'm sure we  
21 could.

22 THE COURT: Okay.

23 MR. WEINTRAUB: Thank you, Your Honor.

24 THE COURT: Thank you.

25 Others want to be heard? Yes, come on up, please.

1 MR. DAVIS: Thank you, Your Honor.

2 THE COURT: Now forgive me, I know people who  
3 appear here more frequently than you, so could you introduce  
4 yourself?

5 MR. DAVIS: It's Josh Davis for Dori Powledge  
6 Phillips, the individual plaintiff.

7 THE COURT: Okay.

8 MR. DAVIS: First --

9 THE COURT: Will I need to pull your complaint or  
10 can I just invite you to start talking?

11 MR. DAVIS: I don't think you'll need to pull the  
12 complaint.

13 THE COURT: Well, I got it any way, Mr. Davis. Go  
14 ahead.

15 MR. DAVIS: Okay. First to address Your Honor's  
16 concern about the adequate experience of me in Bankruptcy  
17 Court I can assure you I am not adequately experienced in  
18 Bankruptcy Code law to simply be here representing my client  
19 without help. I do have help. My bankruptcy counsel in  
20 Houston has not filed an admission pro hac vice, will be  
21 doing so. Certainly I'm comfortable with his knowledge of  
22 the Bankruptcy Code and some other complex bankruptcies that  
23 he's been a part of that are certainly taking place in the  
24 Southern District of Texas.

25 That being said it sounds like Mr. Hilliard has

1 engaged bankruptcy counsel that the Court is familiar with  
2 and I think will be of good use to both the Court and to my  
3 individual client with regard to the issues that the Court  
4 has already addressed with other counsel concerning the  
5 economic loss ignition switch claims.

6 Given the fact that the Court has provided me a  
7 brief opportunity I suppose it's appropriate to talk about  
8 the macro issues with regard to my specific client's claims  
9 and the sui generis nature of these claims.

10 She had a lawsuit in 2007 that was litigated and  
11 was litigated substantially with Old GM prior to the removal  
12 to bankruptcy and prior to the sale order. That case  
13 resulted in a settlement in August of 2010. But certainly  
14 prior to that settlement my client's due process rights, as  
15 much as anyone's, was prejudiced by the actions of New and  
16 Old GM as outlined in our petition.

17 And I would say to the Court respectfully one  
18 unique aspect of my client's claim is the fact that there  
19 was ongoing discovery leading up to that settlement in which  
20 very specific discovery requests were made by Old GM and as  
21 I understand the GUC Trust's position were further  
22 prejudiced by New GM subsequent to the sale order when  
23 documents that would have been responsive to material  
24 questions of fact that supported by client's position about  
25 what caused this wreck that killed her husband and four

1 children were not answered, and certainly were not answered  
2 adequately with the kind of documents that would have  
3 demonstrated that the claims were meritorious as opposed to  
4 being the result of Mr. Adam Powledge's suicidal, murderous,  
5 you know, rage that resulted in the wreck. That was GM's  
6 affirmative alternative causation theory in that case.

7 So certainly that fact combined with the fact that  
8 we were actively litigating with someone that certainly  
9 everyone has an expectation is litigating in good faith and  
10 was not responding to very specific discovery requests that  
11 would have demonstrated the merits of plaintiff's claims at  
12 that time resulted in a significant undervaluing in the  
13 Bankruptcy Court of that claim as it was settled.

14 There should have been absolutely no creditability  
15 given to GM's position that my client's husband caused this  
16 wreck purposefully, which was the only alternative causation  
17 theory they came up with based on what we now know to be  
18 recalls that demonstrate the exact kinds of electrical  
19 mechanical failure that would have led to the wreck.

20 Another unique fact about my client's fact. We  
21 were litigating with New and Old GM. First in the Galveston  
22 District Court State Court and then after New GM's removal  
23 in the Southern District of Texas for months.

24 The recall that affects my client's ignition  
25 switch did not occur until June 30th. Prior to that time

1 New GM had already filed a 12(b)(6) motion, we were in the  
2 midst of very active litigation, and at no time had they  
3 indicated either to plaintiff, myself, my client, or to this  
4 Court that they were going to be enforcing the sale order as  
5 to personal injury claims, even those that predated the sale  
6 order. It was only on August 1st that that occurred.

7 So to the extent that New GM in its briefing in  
8 its letter to the Court has somehow complained of  
9 plaintiff's counsel ignoring the injunctive order of the  
10 Court or the sale order we were simply operating on what was  
11 already New GM's public statements concerning its  
12 willingness or unwillingness to litigate these issues with  
13 this Court.

14 THE COURT: Pause, please, Mr. Davis.

15 I don't think anybody, or at least I'm not trying  
16 to find fault with you in trying to represent your client up  
17 to this point, I guess the issue that I have is can we weave  
18 your needs and concerns into the scheduling orders that I've  
19 previously entered and I'm about to enter, and can you join  
20 the dialogue, and will you enter into a stay stip to tee  
21 those issues up before me either in conjunction with or  
22 shortly after the other guys?

23 MR. DAVIS: With regard to the legal issues that  
24 have already been discussed, due process, mootness, those  
25 issues I think can adequately be addressed by myself on the

1 kind of extended timeline that the Court has already  
2 outlined.

3 With regard to my client's specific recall that we  
4 think is the actual cause of this wreck, which is a May 15th  
5 recall that does not impact or implicate the ignition  
6 switch, but is solely about a brake wiring harness that has  
7 not been the subject of the Valucas report, has not been the  
8 subject of multiple congressional hearings in which GM  
9 provided documents, and certainly would not be discussed  
10 significantly in what's already been ordered to be delivered  
11 the redelivery materials by the MDL, my client is prejudiced  
12 from being able to adequately brief the merits of her fraud  
13 claim that is specific to her and to the recall that we  
14 think most closely fits the facts as that know them in terms  
15 of what caused the upside lying wreck.

16 THE COURT: Well you're saying two separate  
17 things, Mr. Davis, let's slice and dice them.

18 One you're saying that you don't have an ignition  
19 switch issue but you have a separate issue, and then second  
20 you're saying that although you enter into a stip you were  
21 defrauded effectively in entering into that stip either by  
22 things that were said to you or by discovery violations, if  
23 I hear you right.

24 Although the offense -- alleged offense that New  
25 GM entered into or engaged in doesn't involve an ignition

1 switch it at least seemingly has a lot of overlap with the  
2 other issues that the other folks are litigating, except  
3 that I guess whether there was failures of disclosure,  
4 vis-à-vis, your problem, I think you said a harness in --

5 MR. DAVIS: A brake wiring harness.

6 THE COURT: Brake wiring harness. And that's an  
7 electro mechanical device that links the brake pedal with  
8 the brakes actually operating or something different?

9 MR. DAVIS: Yes, and there are associated problems  
10 with the cruise control, power steering, other similar  
11 effects that have been described by an ignition switch  
12 defect, but given the fact that one of the -- one of the  
13 side affects of this issue is that the brake lights fail to  
14 come on when you're applying the brake.

15 Well GM as part of its murder, suicide,  
16 affirmative defense specifically highlighted the fact that  
17 witnesses testified they did not observe brake lights  
18 leading up to impact.

19 THE COURT: And your contention is that the reason  
20 that the brake lights didn't light up is unrelated to  
21 whether or not the driver put his foot on the brake pedal.

22 MR. DAVIS: Well we know -- well, it's plaintiff's  
23 position --

24 THE COURT: You're saying that even though he  
25 might have put his foot on the brake pedal the witnesses

1 might have not seen brake lights because of the separate  
2 issue that you're identifying.

3 MR. DAVIS: Correct. The brake wiring harness.

4 THE COURT: I understand the issue.

5 MR. DAVIS: Okay.

6 THE COURT: Obviously I'm not dealing with the  
7 merits.

8 MR. DAVIS: And --

9 THE COURT: But forgive me, I could swear that you  
10 had a vehicle produced back in the Old GM era, like a 2007  
11 or was that the time of the accident and the vehicle was  
12 made even before that?

13 MR. DAVIS: It was a 2004 Malibu, and the accident  
14 occurred on October 18th, 2005.

15 THE COURT: Oh, 2005.

16 MR. DAVIS: But in -- I'll just quickly, Your  
17 Honor, my delineation between what we can stipulate to and  
18 what we can't is purely the legal arguments in which the  
19 Court is going to be assessing due process violations and  
20 legal arguments concerning, for example, the correct  
21 standard for fraud on the Court that can certainly be  
22 briefed absent some specific discovery regarding the brake  
23 wiring harness recall that we think my client's underlying  
24 case was caused by.

25 The thing that I think certainly my individual



1 client needs to be provided discovery on is documents that  
2 have never been produced to anyone and certainly haven't  
3 been the subject of an internal GM report.

4 The Valucas report is going to provide and has  
5 provided a lot of information and documents that are  
6 applicable to the ignition switch recall that simply are not  
7 going to be particularly helpful regarding the recall that  
8 based on what we know seems to be most applicable to this  
9 underlying crash.

10 THE COURT: Okay. Well, Mr. Davis, I'm not here  
11 to play let's make a deal with you. I can tell you if you  
12 don't already know how I've ruled on people who are of a  
13 mind to go it alone and who have made similar arguments to  
14 you, and I encourage you to read my decisions in the Finuf  
15 (ph) and Elliott matters.

16 You have the right if you want to file a no stay  
17 pleading. I guess it would have to come after New GM filed  
18 something, which I'm not sure if it's fully filed yet or  
19 not. And if you do you'd have to -- or if you're thinking  
20 about doing it you'd have to make a preliminary decision  
21 first as to whether you can comply with Bankruptcy Rule 9011  
22 which is like Federal Civil Rule 11, in light of the rulings  
23 in that area.

24 I imagine you could enter into a stip with New GM  
25 so you could go directly up on appeal if you wanted to

1 without subjecting yourself to Rule 11 risks.

2 At some point your contentions will be heard  
3 either as flowing from the matters that are already before  
4 me or anything else you want to argue, but the chances of  
5 you being allowed to go it alone ahead of the other -- I  
6 thought there were 94 -- I thought I heard 104 at this point  
7 -- others, practically everybody is making arguments that  
8 their cases -- that's an exaggeration -- many people are  
9 making arguments that their cases are special.

10 You also heard the back and forth on discovery  
11 today. If I'm not of a mind to allow discovery of the type  
12 that Mr. Flaxer issued or desired, which had some legitimate  
13 justification, albeit on balancing I ruled against him, I  
14 have some great difficulty, I'll just at the start of every  
15 argument I tell you what I need you to address and this is  
16 what I'm going need you to address, why your claim that you  
17 should get any discovery at this point is any different. It  
18 sounds like it's a lot worse.

19 MR. DAVIS: Well, Your Honor --

20 THE COURT: But here's what I'm telling you you  
21 got to do. You're to caucus with the other parties in this  
22 case, get yourself bankruptcy counsel, because at least  
23 seemingly if you have a vehicle made by Old GM prepetition  
24 it's subject to at least one of the three categories of the  
25 sale order that New GM has been relying upon and going

1 against people like the Finuffs and the Elliotts and most of  
2 the others, and if you want to deal with it the mechanism is  
3 going to be by a no stay pleading.

4 Sooner or later your concerns are going to be  
5 heard, but the chances of you being allowed to litigate them  
6 in another court before I've ruled on this issue are about  
7 the same as me playing for the Knicks, or in your term it's  
8 the Rockets.

9 MR. DAVIS: And I understand Your Honor's  
10 instruction regarding the stay.

11 THE COURT: Okay.

12 MR. DAVIS: It's not -- it's not my intent to file  
13 something that is clearly so unnecessary based on Your  
14 Honor's representations from the bench.

15 THE COURT: I appreciate that.

16 I would encourage you to have a dialogue with the  
17 other guys to see when and how your claim should be  
18 addressed in the context of everything else that's being  
19 addressed.

20 MR. DAVIS: And I will certainly abide by the  
21 Court's instruction on that issue as well.

22 That being said, with regard to discovery I don't  
23 know how to make this any clearer. Plaintiff's claims were  
24 being actively litigated related to recalls that are  
25 completely unrelated and were not addressed by the Valucas

1 report or any documents that would be subject to the  
2 redelivery material, and for that reason being able for my  
3 client to demonstrate the due process prejudice that  
4 occurred to her it's very difficult to say that we are  
5 somehow going to be able to rely on these documents that  
6 don't appear to be particularly relevant to her recall that  
7 underlies her due process claim because there just hasn't  
8 been much.

9 You know, the Valucas report doesn't address the  
10 brake wiring harness recall or what GM knew or when it knew  
11 or when it didn't disclose information or documents to  
12 either this Court or to my client.

13 And it would seem that because my client's claims  
14 are so intertwined on that specific recall that we would be  
15 able to get some documents similar to those that have  
16 already been produced by GM but specific to this recall.

17 Because at the end of the day, Your Honor, I  
18 imagine I'm going to be left in a position where the Court  
19 having the briefing from both sides is going to be looking  
20 at the stipulations and certainly all the documents that are  
21 being relied upon, moth significantly the Valucas report,  
22 and I'm going to be left out in the cold because my claim  
23 and the underlying prejudice relates to a recall that is  
24 completely separate and not addressed by either the Valucas  
25 report or any congressional hearing. That's my issue.

1 THE COURT: I understand your issue, Mr. Davis, I  
2 understood it the first time you told it to me.

3 MR. DAVIS: Okay.

4 THE COURT: The problem is as I articulated to  
5 you, that the sale order and related sale injunction don't  
6 mention ignition switches. What they speak of is vehicles  
7 that were manufactured by Old GM.

8 I am not going prejudice the ultimate outcome of  
9 any controversy between you and Mr. Steinberg on that issue,  
10 and I don't rule out for half a second that sooner or later  
11 you're going to get the discovery you're looking for.

12 But the procedural issue before me now is how in  
13 the context of 104 or whatever individual and class actions,  
14 mainly the latter, that are on my watch, the extent to which  
15 I allow matters premised on the outcome of arguments to  
16 govern how I manage them before I decide the underlying  
17 issues.

18 And as I stated in the Finuf decision I am  
19 unwilling to assume the outcome in determining my extent of  
20 jurisdiction to decide the underlying issues.

21 MR. DAVIS: I appreciate that.

22 THE COURT: Thank you.

23 MR. DAVIS: Again.

24 THE COURT: Okay. Anybody else wanting to be  
25 heard at this point on the issue that I discussed with

1 Mr. Steinberg and Mr. Davis? Ms. Rubin, come on up, please.

2 MS. RUBIN: I appreciate Your Honor's patience  
3 with us, I know that the Court is eager to bring this  
4 proceeding to a close.

5 I want to mention that the GUC Trust is also a  
6 party to the lawsuit involving Mr. Davis' client, so that  
7 the ultimate controversy is not just between Mr. Davis and  
8 Mr. Steinberg but also involves the GUC Trust.

9 And I'll say a few things here. Your Honor, as  
10 Mr. Davis touched upon there are lots of recalls that are at  
11 issue here. I would refer Your Honor to paragraphs 56  
12 through 77 of the GUC Trust and unit holders' agreed upon  
13 facts which discuss those recalls at length. One of them at  
14 least is at issue in Mr. Davis' client's suit.

15 The legal issue here in Mr. Davis' suit as he  
16 outlined for the Court is not the defect in his client's  
17 car, it is the fraud in litigating the claims related to  
18 those defects which was revealed to Mr. Davis as he contends  
19 or Mr. Davis' client at the times of the applicable recall  
20 in May of 2014.

21 It is the GUC Trust' position that the damages of  
22 which Mr. Davis' client now complains were caused by the  
23 recall. They are not an underlying product liability  
24 defect.

25 I'd also point out there's an existing motion to

1 stay already in Texas. We are the informationally most  
2 impoverished party here. To the extent that Mr. Davis and  
3 others like him need to litigation in the court the motion  
4 to enforce brought by New GM all I would say is this, it's  
5 impossible for us to understand whether or not Mr. Davis'  
6 due process rights were or were not respected without having  
7 access to some of the documents to which he referred. We  
8 simply do not know what happened with respect to the recall  
9 that he claims is at issue in his client's complaint. We  
10 can't say for sure whether or not information was presented  
11 to him that allowed his client to fully understand the  
12 nature of her claims as we understand is necessary for him  
13 to have a claim under the code.

14 We would ask that the Court consider that in  
15 scheduling the new motions to enforce and whether or not  
16 they should be part of the same schedule that we've  
17 discussed earlier.

18 Thank you, Your Honor.

19 THE COURT: Thank you. Well this part is pretty  
20 easy, folks. Mr. Davis, there's a section -- where's  
21 Mr. Davis? Oh, there you are. There's a section of the  
22 Bankruptcy Code 1109 that says in a Chapter 11 case any  
23 party in interest has the right to appear and be heard on  
24 any issue.

25 What that means as a practical matter is that on

1 anything that you're litigating before me now the GUC Trust  
2 has told you they're interested in the controversy as well  
3 or they may be affected by it, you've got to include them on  
4 any papers you do. That's obviously very easy.

5 When you ultimately get to discovery going back  
6 and forth or stipulations and so forth one of my published  
7 opinions says that even in an adversary all parties in  
8 interest have a right under 1109 to participate in  
9 discovery, although they got to try to do it in a non-  
10 burdensome way. That's going to give Ms. Rubin a chance to  
11 have a seat at the table. The case is called -- I think  
12 Adelpia. You can cite check a -- or shepardize a case  
13 called Term Lenders versus Caldor (ph), which is a Second  
14 Circuit decision that laid out the principal and this was  
15 one of the early decisions that implemented rights after  
16 that Caldor decision came down.

17 Now, I still think that discovery -- you're going  
18 to have to address my questions at the outset of the  
19 argument on your special needs and concerns is going to be  
20 premature at this point, but when it comes, if it comes,  
21 you're to invite Ms. Rubin, and since I normally prefer that  
22 parties try to agree upon their discovery needs and concerns  
23 informally without court intervening, just include her at  
24 the table at such time as it happens.

25 Mr. Steinberg?



1 MR. STEINBERG: Your Honor, I'm happy to work with  
2 Mr. Davis to see whether we can agree to something as to the  
3 timing of the no stay pleading so that it's not lost.

4 The present pleading and the letters that Mr.  
5 Davis writes did what the earlier complaints did in the  
6 ignition switch actions which defines Old GM and New GM as  
7 collectively GM and then where I say the entire allegations  
8 as it was GM.

9 Just so there's no confusion this -- after the  
10 sale this claimant actually filed a claim in the case,  
11 which --

12 THE COURT: Claim in the Old GM case -- you mean a  
13 claim --

14 MR. STEINBERG: In the Old GM --

15 THE COURT: -- like a traditional prepetition  
16 claim?

17 MR. STEINBERG: Right. That's correct. So it's  
18 sort of a tacit admission that they knew that that was the  
19 party to go after Old GM.

20 What he's complaining about now was a settlement  
21 reached by the GUC Trust that that was a mediated  
22 settlement, it wasn't handled by New GM, it was handled by  
23 the GUC Trust and their counsel.

24 If he wants to vacate that settlement which Your  
25 Honor actually approved because he thinks he has rights he

1 actually should file that type of motion. But I actually  
2 had no clue what Ms. Rubin said as to how she wants to  
3 reframe his claim. He got notice -- his client got notice  
4 of the sale, his client got notice of the bar order, his  
5 client filed the claim against the GUC Trust, the bankruptcy  
6 estate, they went to court-ordered mediation, they had a  
7 settlement, Your Honor approved the settlement.

8 If he thinks that something happened because of a  
9 recall on a car that was destroyed in 2005 by an accident  
10 which was clearly a prepetition event then he needs to  
11 articulate what the claim is and we will respond as to  
12 whether we think that is a claim or not a claim.

13 But I didn't want the confusion that Ms. Rubin had  
14 said to linger with Your Honor.

15 THE COURT: All right. Look, this isn't the first  
16 time or I suspect the last that New GM is going to say it's  
17 Old GM's problem and Old GM is going to say it's New GM's  
18 problem, and I'm not going to decide those issues today.  
19 All I'm trying to do is tee this stuff up in an orderly way  
20 so this case doesn't spin out of control, and you guys are  
21 all good lawyers and I'm going expect you to do that.

22 Anything else? Okay, then we're adjourned.

23 MR. STEINBERG: Your Honor, this is a status  
24 conference, right, so what -- what I'd like to do is to be  
25 able to try to propose an order which I'll settle on all the

1 plaintiffs which is to try to impose the same stay, no stay,  
2 either you enter into a voluntary stay and then if you think  
3 you're not subject to Your Honor's jurisdiction do a no stay  
4 and file a pleading, and I will be -- I will be cordial and  
5 try to work with whatever deadlines that people have.

6 THE COURT: So what you're speaking of now is  
7 those with prepetition injury and death claims and claims of  
8 any character with respect to matters other than ignition  
9 switches.

10 MR. STEINBERG: Economic loss cases --

11 THE COURT: Economic loss cases.

12 MR. STEINBERG: -- which involve Old GM cars.

13 THE COURT: All right. You can tee it up that way  
14 procedurally and that will be the mechanism.

15 I still want you to see if you can go forward to  
16 see if we can avoid overlap between the stuff that's already  
17 going on here and the new stuff, and that to the extent  
18 there isn't any they have a means of catching up without  
19 holding back everything going on here.

20 MR. STEINBERG: That's fine, Your Honor. And I  
21 will try to -- just so Your Honor knows, I will try to reach  
22 out to all of them to see if I can get them to agree to a  
23 form because there's no coalesce counsel, and if not I will  
24 settle the order on seven-days notice, which will give  
25 everybody a week to react to it, and if people call at the

1 end and ask for a little more time I will try to accommodate  
2 date them.

3 THE COURT: Okay. Fair enough. Anything else,  
4 anybody?

5 MR. STEINBERG: No.

6 THE COURT: Thank you. We're adjourned.

7 (Whereupon these proceedings were concluded at 12:23  
8 PM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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